IN THE

Supreme Court of the United States

October Term, 1976

No. 76-1592

HARVEY R. MILLER, as Trustee in Bankruptcy of IRA HAUPT AND CO., a Limited Partnership, Bankrupt,

Petitioner,

v.

NEW YORK PRODUCE EXCHANGE, DONALD V. MACDONALD, HARRY B. ANDERSON, MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED, WALTER C. KLEIN, BUNGE CORPORATION, HAROLD H. VOGEL, CONTINENTAL GRAIN COMPANY, SIDNEY FASHENA and I. USISKIN & Co.,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Respondents submit this joint brief in opposition to the petition for a writ of certiorari dated May 13, 1977.

Opinion Below

The court of appeals decision has now been reported at 550 F.2d 762.

Questions Presented

1. Whether the following question of petitioner, which was not raised below and is now moot as a result of the jury's verdict against petitioner, merits review by certiorari: does alleged negligence by a commodities exchange and its directors in allegedly failing to detect certain conditions and to take prompt remedial action subject the exchange and its directors to liability for treble damages under the antitrust laws, where there was no evidence of bad faith?

2. Whether the following question of petitioner merits review by certiorari: in an action on behalf of a member of a regulated exchange against the exchange and its directors, in which the evidence shows at most negligence on the part of the defendants, was it error to permit the jury to consider evidence of that member's misconduct?

3. Whether the following question of petitioner merits review by certiorari: did the court of appeals err in holding the admission into evidence of a relevant report of a public agency to be "within the broad discretion of the District Court"?

Statement of the Case

Petitioner is the trustee in bankruptcy of Ira Haupt & Co. ("Haupt"), the principal broker for Anthony DeAngelis, perpetrator of the infamous 1963 Salad Oil Swindle. This action was brought in 1966 against respondents, the New York Produce Exchange (the "Exchange"), five of its directors, and the companies with which those directors were affiliated. Petitioner asserted claims under the Commodity Exchange Act and the antitrust laws.

After years of discovery by petitioner, the case was tried before a jury for over six weeks in 1975. The antitrust claim, and the claims against the companies with which the individual respondents were affiliated, were dismissed by the district court at the close of petitioner's case. (JA 1794a; JA 1981a)* The remaining claims were submitted to the jury, which found in respondents' favor. (JA 2131a-2132a) Judgment in accordance with the jury's verdict was unanimously affirmed by the court of appeals.

The action arises out of Haupt's activities as broker for DeAngelis and his controlled corporation, Allied Crude Vegetable Oil Refining Corporation ("Allied"),** in cottonseed oil futures trading on the Exchange in 1963. Petitioner, suing on behalf of Haupt, makes the extraordinary claim that respondents are liable to Haupt because they failed to discover and prevent alleged wrongdoing by Allied in which Haupt was an active participant. In the present posture of the case, petitioner's claim is still more extraordinary: Both courts below held that there was no evidence of bad faith by any respondent, and it would obviously be inappropriate to relitigate that issue here.† Thus,

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* References preceded by "JA" are to the Joint Appendix submitted to the court of appeals.

** "Allied" will be used hereafter to include DeAngelis and all other entities through which he dealt in vegetable oil.

† The petition for certiorari suggests in a footnote (p. 2) that this Court should consider "[w]hether the trial court erred in refusing to permit the jury to consider the evidence of Respondents' bad faith." Petitioner apparently does not press this suggestion seriously. He offers no reason why this Court should grant certiorari to review a sufficiency of the evidence question after a seven-week jury trial.

petitioner now contends that respondents are liable to Haupt because of their alleged negligence in regulating the cottonseed oil futures market—although there was overwhelming evidence of reckless and wilful misconduct by Haupt itself.

We will summarize briefly the principal events of the two time periods into which the facts divide: the period before November 14, 1963, and the period November 14-19, 1963.

Before November 14, 1963

During the period before November 14, 1963, Allied purchased an enormous number of cottonseed oil futures contracts in trading on the Exchange. By November 14, Allied was the buyer on 90% of all the cottonseed oil futures contracts then open. (PX 1, JA 1e; JA 813a) Eighty percent of these contracts were acquired and held for Allied by Haupt. (PX 133, JA 535e; DX 214, JA 1277e) Haupt extended large amounts of financing to Allied and earned commissions from the Allied account which were a substantial percentage of Haupt's total income. (JA 1860a-1861a; JA 1967a)

The size of Allied's position was not disclosed, either by Allied or Haupt, to the Exchange or to any of the other respondents. This was in accordance with the prevailing practice in futures markets; the positions held by traders are among the most closely guarded of secrets. (JA 287a-289a; JA 306a; JA 872a) Allied's enormous position thus was known only to Allied itself, to Haupt, and to the Commodity Exchange Authority ("CEA"), the United States

government agency with jurisdiction over futures markets.* (JA 287a-289a) Positions of traders were reported, in code, directly to the CEA. These positions were kept by the CEA in confidence, as required by the Commodity Exchange Act, 7 U.S.C. §12. Indeed, the Exchange was rebuffed in an attempt to find out Allied's position from the CEA in July 1963. (JA 520a-523a; JA 635a; JA 780a)

The thrust of petitioner's case with respect to the pre-November 14 time period was that the respondents were liable to Haupt for not discovering what Haupt knew and concealed—the extent of Allied's purchases. At trial, petitioner relied heavily upon expert witnesses who testified from hindsight that various statistical indicators should have served as "warning signs" to the respondents, and should have led them to launch an inquiry more extensive than the inquiries which the respondents in fact made. The Exchange did specifically make inquiry of Allied and Haupt, and received reassuring replies from both. (JA 531a; JA 534a-535a; JA 542a; JA 743a-747a; JA 756a; JA 762a-773a) But petitioner, though he sues on behalf of Haupt, claims that the Exchange was at fault in accepting Haupt's word.

Respondents demonstrated at trial that the alleged "warning signs" were at most ambiguous; that they had no reason to be unduly concerned about the cottonseed oil futures market before November 14; and that the inquiries that they made were diligent and thorough. There is no need to detail the evidence on this question. All the evidence was before the jury, which resolved the negligence issue against petitioner.

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*The CEA was replaced in 1975 by the Commodity Futures Trading Commission pursuant to Pub. L. 93-463, 88 Stat. 1389.

In further support of his contention that respondents should have discovered the truth which Haupt was concealing, petitioner relied upon the existence of business dealings between Allied and certain of the corporate respondents which were engaged in the vegetable oil business. However, petitioner never produced a shred of evidence that any respondent had knowledge of Allied's position or that the business dealings between respondents and Allied were anything but legitimate transactions. Indeed, the dealings between certain respondents and Allied furnished an additional reason for respondents to believe that there was no grave cause for concern: Allied was a major and well-established firm in the vegetable oil trade. (JA 402a; JA 631a; JA 717a; JA 770a-771a; JA 1005a) Until after November 19, 1963, respondents knew nothing of Allied's less savory activities—though Haupt did know of Allied's and Haupt's huge accumulation of cottonseed oil futures contracts.

November 14-19, 1963

On Thursday, November 14, as a result of renewed inquiries by the Exchange, the CEA supplied to it information which disclosed, for the first time, the size of Allied's position. (PX 1, JA 1e; JA 812a) Five days later, on Tuesday, November 19, 1963, the Exchange's Executive Committee voted to take the drastic step of closing out trading, cutting across all existing contracts, and compelling traders to settle the contracts at prices determined by the Exchange. (JA 1880a; JA 1927a-1928a) Petitioner does not complain of the Exchange's action on November 19. His complaint is that the Exchange should have taken this action five days earlier, when the market prices were at a

higher level, and thus the long position held by Allied and Haupt would have produced more money. In short, petitioner claims for Haupt the benefit of the November 14 prices—though petitioner also claims that Allied's purchases through Haupt before November 14 had forced prices up to an excessive level.

Respondents' conduct during the period November 14-19 was reasonable and appropriate; Haupt's was not. On Thursday, November 14, the very day on which it learned the size of Allied's position, the Exchange appointed a Control Committee, and the Control Committee immediately took steps to determine the positions held by all of the Exchange's members in an effort to work out an orderly reduction of Allied's holdings. (JA 566a-569a; JA 573a) Haupt, on whose behalf petitioner now complains, had not at this point come to the Exchange for help or disclosed any of its knowledge of the situation to the Exchange.

On Friday, November 15, the market price of cottonseed oil futures declined only slightly. (PX 15b, JA 567e) However, on Monday, November 18, there was a more substantial decline. (JA 614a) On the evening of November 18, the Executive Committee of the Exchange imposed a price fluctuation limit on cottonseed oil futures trading, in order to preserve an orderly market. (PX 13b, JA 65e; JA 581a-582a) Still, Haupt had not turned to the Exchange for help, although Haupt by then knew that Allied's financial condition was shaky: Haupt had received uncertified checks from Allied which it did not even attempt to cash (JA 1960a), and had been told by Allied that it had no solution to its financial difficulties (JA 1961a). Haupt chose to remain silent and gamble on the market.

On Tuesday, November 19, Allied filed a petition in bankruptcy. (JA 1095a) Finally, Haupt turned to the Exchange, informed the Exchange that Haupt was in jeopardy because of its large extensions of credit to Allied, and stated that Haupt could survive if, but only if, trading closed at once. (JA 1237a-1238a) The Exchange did close trading, over the protests of traders holding short positions who would have benefited from a further market decline (JA 668a; JA 986a); by this action, the Exchange earned expressions of gratitude from several of Haupt's partners. (DX 106, JA 1111e; JA 657a)

After November 19, 1963, it was discovered that the field warehouse receipts which Allied had supplied to its creditors, including Haupt, were fraudulent or forged; the oil that was supposed to be in Allied's tanks was not there. Haupt was driven into bankruptcy; its trustee thereafter brought this action to recoup $12 million in margin calls paid out by Haupt as a result of Allied's loss in the market decline between November 14 and November 19, 1963.

ARGUMENT

I

Certiorari should not be granted to decide whether respondents could be liable under the antitrust laws for alleged negligent omissions.

Until the petition for certiorari was filed, petitioner's antitrust claim was frankly dependent on his allegation that respondents acted in "bad faith"—meaning that respondents allegedly conspired with each other and with others to regulate the cottonseed oil futures market in such a manner as to make Haupt bear the burden of Allied's misadventures. No evidence of any such "conspiracy" was ever presented. Accordingly, the district court directed the dismissal of petitioner's antitrust claim at the close of petitioner's case, and the court of appeals affirmed that dismissal.

Petitioner cannot relitigate here his discredited "bad faith" claim. Indeed, except for a perfunctory footnote, the petition for certiorari appears to accept the lower courts' holdings that there was no evidence of bad faith by any respondent.

Petitioner now argues for the first time that even in the absence of any evidence of bad faith, his antitrust claim should not have been dismissed. Thus, he claims that respondents may be subjected to antitrust liability if they were merely negligent in failing to discover the enormous long position of Allied and Haupt prior to November 14, 1963, or in waiting from Thursday, November 14 to Tues-

day, November 19 to close the market and rescue Haupt from the consequences of its own recklessness and greed.

Petitioner's contention that allegedly negligent omissions are a sufficient predicate for antitrust liability in a case involving a regulated exchange and its directors is wholly lacking in merit; it has no support in any authority. Moreover, this contention was never made by the petitioner below; and it was mooted by the jury's verdict on the non-antitrust count in the petitioner's complaint, which rejected a claim based on the same alleged negligence. For all of these reasons, certiorari should be denied with respect to the first issue presented by the petitioner.

A. Petitioner's contention is without merit and therefore does not warrant review by certiorari.

No authority, so far as we are aware, holds or even suggests that negligent omissions of the kind with which petitioner charges respondents may be a basis for imposing antitrust liability on a regulated exchange and its directors. Indeed, the idea of antitrust liability for alleged negligent omissions contradicts the thrust of the Sherman Act's prohibition of any "contract, combination . . . or conspiracy, in restraint of trade." Sherman Act §1, 15 U.S.C. §1. It is axiomatic that liability under Section 1 depends upon some affirmative action taken in concert. *See McCreery Angus Farms* v. *American Angus Ass'n*, 379 F.Supp. 1008, 1016-1017 (S.D. Ill.), *aff'd mem.*, 506 F.2d 1404 (7th Cir. 1974); *Blalock* v. *Ladies' Professional Golf Ass'n*, 359 F.Supp. 1260, 1263 (N.D. Ga. 1973); *Denver Rockets* v. *All-Pro Management, Inc.*, 325 F.Supp. 1049, 1062 (C.D. Cal. 1971); *see also Duplex Printing Press Co.* v. *Deering*, 254

U.S. 443, 465 (1921). Here, no such action occurred. Petitioner's claim is only that respondents were not sufficiently diligent in discovering the facts, or were too slow to act when the facts were discovered.

The cases relied on by petitioner (Pet., pp. 11-12) do not support antitrust liability based on allegedly negligent omissions. *Silver* v. *New York Stock Exchange*, 373 U.S. 341 (1963), involved a refusal by the Exchange to permit continuation of a "private wire" service. *Chicago Board of Trade* v. *United States*, 246 U.S. 231 (1918), involved a rule controlling the times and prices at which Board members could make purchases. *Asheville Tobacco Board of Trade, Inc.* v. *FTC*, 263 F.2d 502 (4th Cir. 1959) and *Rogers* v. *Douglas Tobacco Board of Trade, Inc.*, 244 F.2d 471 (5th Cir. 1957), *cert. denied*, 361 U.S. 833 (1959), both involved rules for the allotment of selling time among tobacco warehouses. In each case, the antitrust attack was directed against some affirmative act by an exchange or board of trade to regulate or limit trading practices. No such affirmative act is at issue here.

Petitioner claims that the issue he presents is "the question left unanswered in *Silver*" (Pet., p. 10). He ignores, however, the fundamentally different nature of the conduct at issue in *Silver* and in this case. In *Silver*, the Stock Exchange and its members had deliberately prevented Silver's "private wire" service from continuing to operate. As the Court pointed out, this conduct "would, had it occurred in a context free from other federal regulation, constitute a *per se* violation of §1 of the Sherman Act. The concerted action of the Exchange and its members here was, in simple terms, a group boycott . . . ." 373 U.S. at 347.

In this case, there is no comparable allegation of "concerted action." The most that petitioner can now contend is that the Exchange and its directors carelessly failed to perform their regulatory functions. Neither *Silver* nor any other case suggests that such negligent omissions violate the antitrust laws.

The question left open by *Silver* was under what circumstances conduct like the conduct there at issue, which would otherwise constitute a *per se* violation, might be justified by a federally sanctioned scheme of self-regulation. In *Silver,* this Court held that the Stock Exchange's action could not be justified because it "occurred under totally unjustifiable circumstances." 373 U.S. at 361. The Court focused on the Stock Exchange's failure to afford the plaintiff notice and opportunity to be heard before the private wire was terminated. In this connection, the Court noted that it need not consider whether or not the termination of the private wire was justified on the merits. The Court added:

> "Thus there is also no need for us to define further whether the interposing of a substantive justification in an antitrust suit brought *to challenge a particular enforcement of the rules on its merits* is to be governed by a standard of arbitrariness, good faith, reasonableness, or some other measure. It will be time enough to deal with that problem if and when the occasion arises." 373 U.S. at 365-366 (emphasis added).

The above language, quoted by petitioner (Pet., p. 13), is inapplicable to this case. This is not an action brought "to challenge a particular enforcement of the rules on its merits." This action, in its present posture, alleges only

negligent failures to act by the Exchange and its directors. There is no basis for the suggestion that such an action may be brought under the antitrust laws. The question of justification, left open in *Silver,* does not arise.

In sum, the claim that respondents may be liable under the antitrust laws for allegedly negligent omissions does not warrant the grant of certiorari.

B. Petitioner did not contend below that respondents' alleged negligence could be a basis for antitrust liability.

The idea of antitrust liability for merely negligent omissions is so utterly lacking in merit that petitioner never urged it on either of the courts below. All parties and both courts have proceeded in this case on the assumption that respondents' alleged "bad faith" was a vital element of petitioner's antitrust claim.

None of petitioner's papers or arguments below asserts that his antitrust claim should survive even if "bad faith" is not found. The antitrust claim in the amended complaint specifically included allegations of "conspiracy" and the allegation, not present in the Commodity Exchange Act claim, that "said acts and said failures to act were not done in good faith but rather to further the selfish interest and personal gain of the defendants . . . ." (JA 27a) Petitioner's brief in the court of appeals, in attacking the district court's dismissal of the antitrust claim, argued that the evidence of bad faith was sufficient to go to the jury—but not that the claim could be sustained in the absence of bad faith. Indeed, the point headings and subheadings in petitioner's briefs below show that petitioner accepted "bad

faith" as an indispensable element of the alleged antitrust violation. His brief in opposition to respondents' motion for a directed verdict contained a point entitled: "Defendants' Bad Faith Failure To Regulate The Exchange Violated The Antitrust Laws." Point I in his brief in the court of appeals was entitled: "The District Court Erred In Directing A Verdict On The Bad Faith Claims"—and "Bad Faith Claims" was used to include the antitrust claim.

Petitioner simply did not make in either the district court or the court of appeals the argument which he now asks this Court to consider. This failure precludes a grant of certiorari. *Neely* v. *Martin K. Eby Construction Co.*, 386 U.S. 317, 330 (1967); *Lawn* v. *United States*, 355 U.S. 339, 362 n.16 (1958).

C. Petitioner's claim that negligence is a sufficient basis for antitrust liability was mooted by the jury's verdict.

While petitioner's antitrust claim was not submitted to the jury, his claim under the Commodity Exchange Act—based upon the identical facts—was submitted. Over respondents' objections, the district court permitted the jury to hold respondents liable on the basis of negligence.*

* As to the pre-November 14 period, the district court charged the jury that, in order to impose liability, it must find:

> ". . . that the defendant, that is the defendant you are considering, knew or had reason to believe or suspect that market manipulation or efforts to distort the orderly functioning of the market was occurring [and]
>
> ". . . that the defendant, whose liability you are considering thereafter failed to take appropriate action in light of the circumstances . . ." (JA 2110a-2111a)

(footnote continued on next page)

(See 550 F.2d at 767.) The jury's verdict in respondents' favor thus exonerated them even from the allegation of negligence.

Even assuming that the district court erred in not permitting the jury to hold respondents liable under the antitrust laws for negligence, petitioner cannot complain of the error: if the antitrust claim had been submitted under the same instructions as the Commodity Exchange Act claim, it must be assumed that the jury would have reached the same result. The issue which petitioner seeks to present is therefore moot, and does not warrant a grant of certiorari.

II

Certiorari should not be granted to decide whether the jury was properly permitted to consider Haupt's misconduct.

Petitioner claims that the decision of the court of appeals is "in conflict with decisions in other circuits" (Pet., p. 14) because the court of appeals upheld the district court's charge which permitted the jury to consider evidence of Haupt's misconduct. There is no conflict among the circuits; on the facts of this case, which bear no resemblance to those in the cases cited by petitioner, the court of appeals' decision was indisputably correct.

Perhaps the most remarkable aspect of this case is that the misconduct of Haupt, on whose behalf the petitioner

As to the November 14-19 period, the district court charged that the jury must find:

> ". . . that the defendant failed reasonably to carry out his or its duties and abused his discretion in regulating the market . . ." (JA 2113a)

sues, was far greater than anything of which respondents have been accused. Respondents are charged with failing to discover the extent of Allied's position; but Haupt knew the size of that position—indeed, it accumulated that position for Allied—and concealed it from the respondents. Respondents are charged with failing to make sufficient inquiry; but when they did make inquiry of Haupt they were reassured that Haupt knew what it was doing. Respondents are charged with failing to deal promptly enough with an emergency situation; but it was Haupt which aided and abetted Allied in creating the emergency. Respondents are charged with waiting five days after learning Allied's position before coming to Haupt's aid; but Haupt chose to continue in its reckless course until the last of those five days, and until then never asked the respondents for help. It is absurd to contend, in the face of these facts, that petitioner should have been permitted recovery against respondents on Haupt's behalf.

Petitioner relies (Pet., pp. 14-16) on some cases which have rejected the defense of *in pari delicto* where that defense was deemed to interfere with the effectuation of a regulatory scheme. But these cases are inapplicable here, because the misconduct of Haupt, a registered futures commission merchant and an Exchange member charged with regulatory responsibilities, was itself the greatest possible threat to the scheme of regulation. On this question, we can do no better than to quote the analysis of the court of appeals (550 F.2d at 768):

> "Appellant contends that wrongdoing on the part of Haupt should not prevent recovery herein, because this would not be in the public interest. We do not agree. Although the regulatory provisions of the Act

> apply to both traders and exchanges, the ultimate aim and intent of the Act is the elimination of wrongful conduct on the part of the traders. It is they, not the exchanges, who manipulate commodity markets. Moreover, in view of the pattern of secrecy which surrounds the activities of traders, it is they, rather than the unknowing directors of exchanges, who best can determine whether the salutary objectives of the Act are to be achieved. Errant plaintiffs have sometimes been permitted recovery in the public interest in order to discourage greater wrongdoing by the defendant. . . . However, where a defendant's only sin is its failure to prevent transgressions by the plaintiff, no benefit flows to the public from rewarding the transgressor. . . We are not yet prepared to hold that it is in the public interest that any plaintiff should be permitted recovery 'lest the supposed wrongdoer be allowed to escape a reckoning.'" (Footnotes and citations omitted)

The essence of petitioner's argument here is "that any plaintiff should be permitted recovery" in any action under a regulatory statute. This argument is without support in authority or common sense.

In its discussion of the issue raised by Haupt's own culpability, petitioner relies upon the phrasing of the district court's charge, and says that it would bar recovery for any misconduct by Haupt "no matter how slight." (Pet., p. 15) The charge does not say this; and in any event it is impossible to call Haupt's misconduct "slight" on the facts of this case. Moreover, petitioner did not submit to the district court any alternative charge on the weight to be given to Haupt's misconduct; petitioner chose to rely on his contention that Haupt's misconduct was wholly irrelevant. Thus, the issue of whether the charge was properly worded

—even if that were a proper issue for certiorari—is not presented here.

Finally, petitioner seeks to rely on his status as a trustee in bankruptcy, claiming that Haupt's misconduct should not be imputed to him. But it is undisputed that petitioner brought this action in the right of Haupt to recover for an alleged injury to Haupt; petitioner never purported to sue in the right of Haupt's creditors.* Petitioner is arguing that the outcome of a suit based on a cause of action belonging only to the bankrupt should depend upon whether the plaintiff is the bankrupt itself or its trustee. The contention was properly given short shrift by the court of appeals. Petitioner does, and must, stand in Haupt's shoes. *Bank of Marin* v. *England,* 385 U.S. 99, 101 (1966); 4A Collier, *Bankruptcy* §70.28 at 385 (14th ed. 1976).

The contention that the jury should not have been permitted to consider Haupt's misconduct is not of sufficient merit to warrant the grant of certiorari.

* By contrast, petitioner's third claim, which was severed before trial and is not at issue here, was brought on behalf of creditors to recover alleged fraudulent transfers.

III

Certiorari should not be granted to consider whether the district court abused its discretion in admitting into evidence the report of the CEA.

Petitioner claims that this Court should grant certiorari to consider whether defendants' exhibit 1A, a report of the CEA on cottonseed oil futures trading in 1963, was properly admitted into evidence. This contention merits only brief comment.

The CEA was the federal agency charged with responsibility for the regulation of commodities futures markets. It had unique sources of information, not available to any private party. It had a staff trained to analyze such information. Indeed, petitioner's expert witnesses based their opinions on statistics compiled by the CEA—but petitioner sought to exclude the CEA's own report based on those statistics. The CEA report was prepared shortly after the events in suit, and not by any party to this litigation. It was prepared under the personal supervision of the CEA's Administrator. In short, it was a document of substantial value in the fact-finding process. The district court clearly had discretion to make this document available to the jury.

Petitioner's principal grievance is that he was denied his right to cross-examine*—in other words, that the document is hearsay. Yet Rule 803(8) of the Federal Rules of Evidence specifically permits the admission of a report of a public agency, as an exception to the hearsay rule. The

* Petitioner had the document in his possession long before trial, but never sought to depose or to subpoena its author.

CEA report squarely met the criteria set forth in Rule 803(8)(C), which reads as follows:

> "(8) *Public records and reports.* Records, reports, statements, or data compilations, in any form, of public offices or agencies, setting forth—
>
> • • •
>
> "(C) in civil actions and proceedings and against the Government in criminal cases, factual findings resulting from an investigation made pursuant to authority granted by law, unless the sources of information or other circumstances indicate lack of trustworthiness."

We will not brief here all of the captious arguments made by petitioner in an attempt to escape the force of the above-quoted rule. Petitioner's assertions that the personal knowledge rule and the opinion rule barred the admission of the report (Pet., p. 18 n.12) are unsound and in any event unworthy of review on certiorari. They were sufficiently answered by the court of appeals, which said (550 F.2d at 769):

> "The District Court admitted into evidence an official document of the CEA containing the data which the Authority had in its files concerning cottonseed oil purchases and sales in 1963, which also contained some statements concerning prices and a commodity squeeze which appellant contends were conclusory. We find no error in this admission. It is often difficult to distinguish between what is fact and what is opinion. . . . For example, the existence or non-existence of a squeeze is demonstrated by a factual compilation of figures. In any event, conclusory statements in an official or business report do not render it ipso facto inadmissible. . . . The admission of this evidence was within the broad discretion of the District Court."

The above holding is clearly correct and is not suitable for review on certiorari.

Conclusion

For the foregoing reasons the petition for a writ of certiorari should be denied.

July 13, 1977

Respectfully submitted,

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